

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

SOUTHERN CALIFORNIA EDISON COMPANY

Employer

and

Case 21-RC-209949

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 47**

Petitioner

DECISION AND DIRECTION OF ELECTION

On November 15, 2017, the International Brotherhood of Electrical Workers, Local 47 (Petitioner) filed a petition seeking to represent all employees classified as Planner Trainee, Planner 1, Planner 2 trainee, Planner 2, and Planner 3 employees employed by Southern California Edison Company (Employer), excluding all other employees (Designer, Admin, Analyst, PCI), guards, managers, and supervisors as defined in the National Labor Relations Act. The Employer contends that the petitioned-for unit is not an appropriate unit, and that an appropriate unit must also include all employees classified as Designer 1, Designer 2, Analyst, and Administrative Aide (Aides).¹

A Hearing Officer of the Board held a hearing in this matter on November 29 and 30, and December 1, 7 and 8, 2017, and thereafter the parties submitted briefs. As explained below, based on the record, the briefs, and relevant Board law, I find that the petitioned-for unit is not an appropriate unit, but that an appropriate unit includes employees classified as Designer 1 and Designer 2, as well as employees in the petitioned-for unit, as modified by stipulation. Therefore, I shall direct an election in that unit.

¹ The parties stipulated that any unit found appropriate should include employees classified as: planner 1, planner 1–trainee, planner 2, planner 2–trainee, and planner 3.

I. Facts

A. Employer's Operation

The Employer is an investor-owned public utility serving approximately five million customers over a 50,000-square-mile service territory located in Southern and Central California. The Employer procures, produces, transmits, and distributes electricity to its customers, and is also responsible for planning, building, and maintaining the assets required to deliver that power to its customers. In addition to power, the Employer also maintains an extensive fiber-optic network.²

The Employer is divided into 12 organizational units: Legal Organization, Transmission & Distribution, Ethics & Compliance, Information Technology, Customer Service, Finance, Office of the CEO, Human Resources/Audit Services, External Affairs, Energy Procurement & Generation, Safety, Security & Business Resiliency, and Power Supply. Planners and Designers are employed in only three of the 12 organizational units: Transmission & Distribution, Customer Services, and Power Supply.

The Transmission & Distribution unit designs, constructs, operates, and maintains systems for the transmission and distribution of electricity. Planners and Designers who work in this unit work in three sections that the Employer refers to as Technical Planning, New Development Planning, and Local Planning. Technical Planning focuses on the power needs of large capital programs and capital investment throughout the Employer's territory, including

² The parties stipulated that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Employer's completed commerce questionnaire shows that it is a California corporation, with principal offices located at 2244 Walnut Grove Avenue, Rosemead, California, and with facilities located throughout its 50,000-square-mile service territory, and it has been engaged in the production and distribution of electricity. During the last calendar year, a representative period, the Employer in conducting these operations, derived gross revenues in excess of \$250,000, and purchased and received at its California facilities, goods valued in excess of \$50,000 directly from points outside the State of California.

infrastructure replacement, in order to preserve the integrity of the distribution system and provide reliable power to the Employer's customers. Technical Planning also involves load growth requirements foreseen by the Employer's engineers.

On the other hand, New Development Planning focuses on the power needs of large residential and commercial developers. It handles other customer-driven work as well, including the establishment of telecommunication towers, installation of transmission charging stations, conversion of mobile homes to current distribution standards, and provision of power for indoor cannabis cultivation. Local Planning is a catch-all section for everything else, and is primarily devoted to community-based projects, including capital maintenance, storm response, and local new business.

The Customer Service unit, a profit center for the Employer, works with external parties, including wireless and other telecommunication carriers, to develop revenue sources for the Employer. Planners work in the section the Employer refers to as Edison Carrier Solutions, which supports the development and extension of the Employer's fiber-optic cable network.³ The Power Supply unit produces and procures electricity. Planners and Designers in the Power Supply unit work in the section that the Employer refers to as Generation.

Planners and Designers are stationed primarily in regional hubs⁴ and service centers,⁵ but sometimes work in other facilities. They frequently interact with each other during the workday because they are both intimately involved in developing work orders. Hubs are tasked with

³ Although Designers do not work in this section, they work in the Transmission Telecom section, which creates the work orders for Edison Carrier Solutions.

⁴ The Employer has 5-6 regional hubs, each of which covers a specific geographical area. Planners and Designers who work in Technical Planning and New Development Planning generally work in hubs.

⁵ The Employer has many more service centers than hubs.

servicing a particular geographical territory. Service centers function on a smaller scale, servicing the community in which they are located.

B. The Employees in Dispute

1. Planners

Planners work in several departments throughout the Employer's service area. The job of the Planners, regardless of the particular organizational unit in which they work, requires a diverse skillset that incorporates technical, project management, and customer-service skills. According to the job descriptions, Planners at the Employer design, plan, and coordinate the construction of its electrical generation, transmission and distribution facilities, and telecommunication facilities. In this regard, they are responsible for preparing the several thousand work orders that the Employer produces annually that are transmitted to various work crews for implementation.

A work order describes the scope of work for the field crew who will actually do the construction, and includes a map of where the work will take place, the cost of the material for the project, as well as a labor estimate. It also contains construction instructions, and it may contain legal requirements such as land-rights and joint-pole agreements.

Work orders begin with the preparation of preliminary designs for projects by Planners referred to as "redlines." Planners use information submitted by customers, or obtained in meetings with customers, as well as from reviewing worksites. Because each project is different, to prepare the redline the Planner uses several software programs, identifies all of the materials and equipment needed for a project, facilitates land-rights checks, and does pole calculations. Planners have to coordinate their activities with customers, drafting technicians, engineers, other utilities, city or local government organizations, and crews. In the execution of their duties,

Planners travel to various work sites. They spend close to half of their work time in the field, and the rest in cubicles drafting their redlines.

Once the redline is prepared, Designers become involved and together the Planners and Designers prepare the work order. However, when it is completed, the Planner reviews the work order before it is sent out. As Planners progress in rank from Planner 1–trainee, to Planner 1, Planner 2–trainee, to Planner 2, and Planner 3, the size of projects for which they prepare redlines and work orders becomes larger and more complex.

According to the Employer's managers, the job of a Planner at the Employer is very desirable. Planners are promoted to all parts of the company because they possess a highly-valued skill set. The minimum education required for a Planner trainee is a high school diploma, but the desired education is a Bachelor's degree in business, engineering, construction management, or a related field. The minimum experience required for a Planner is five years in designated technical fields including estimating, designing, engineering, underground/overhead construction, telecommunications, transmission and distribution. According to the job descriptions, experience in permits, construction methods, fiber-optic design, pole loading, and environmental requirements, among other things, is considered desirable, although not required. To be eligible for a job as a trainee, according to a job description, Planners must have demonstrated a thorough knowledge of engineering principles, construction standards, and industry practices.

The hiring process for Planners is very competitive. For example, in the group most recently hired, 30 individuals were hired out of a group of 2600 applicants. The majority of Planners are hired from outside the company, although many have been promoted from within

the company.⁶ Once hired, Planners undergo a year of training, consisting of three months of classroom work and nine months of on-the-job training. According to one of the Employer's witnesses, even after the year's training is completed, it takes another three years before a Planner is fully trained and effective. As Planners progress in rank they develop specialized skillsets relating to the nature of their work.

All Planners share the same wage scale, which is set by the Employer's Human Resources Department. Planner trainees and Planner 1s are paid by the hour, whereas Planner 2s and Planner 3s are salaried. Planners have the same benefits enjoyed by all other nonunion employees at the Employer.

2. Designers

Using redlines prepared by Planners, Designers prepare work-order maps with computer-aided design software, to develop layouts for components and systems, and to select material. According to the job description for one group of Designers, they must have five years of drafting experience using computer-aided-design software or three years with an Associate's Degree. Although not required, according to a job description, it is desirable for Designer applicants to have an Associate's Degree in an engineering field, or two years in a technical school with an emphasis on computer-aided drafting, math, or engineering.

Designers take the redline drawings created by Planners and convert them to comprehensive work-order drawings using company software. In this regard, Designers frequently interact with Planners to prepare the detailed work orders based on the Planners' redlines specifying the material, equipment and labor needed for the job, and coding the work for

⁶ For example, 12 of the 30 Planners most recently hired came from within the Employer, where they had worked as Designers, Analysts, Administrative Aides, or Customer Service Employees. Of those employees, Designers, according to the Employer, are the most likely to become Planners.

proper invoicing to customers. Designers perform other functions as well, including facilitating land-rights checks.

Whereas Planners focus on design decisions and customer contact and have limited drafting and administrative duties, Designers implement the design decisions, handling the core design work, including drafting the work order with various computer-aided-design programs. Thus, when work duties were reevaluated in one of the Employer's operating units a few years ago to improve efficiency, the more complex administrative duties were shifted from Planners to Designers to free up Planners to spend less time drafting, and more time interacting with customers. Designers also spend time in the field to support the Planners, but spend less time there than Planners.

Designers, like Planners, have a separate wage scale created by the Employer's Human Resources Department, and the same benefits enjoyed by its other nonunion employees. They are hourly paid employees.

3. Analysts

Analysts have two primary responsibilities: to coordinate the activation of meters for new business, and to function as a dispatcher tracking the various activities involved in a work order. Analysts manage the planning "inbox" by monitoring reports and working with Planners and Designers to ensure the appropriate corrective action is taken. Analysts are involved in scheduling inspections, assigning work to Planners, and monitoring work orders to ensure completion of tasks by their due dates. They also prepare reports for Planning Supervisors and perform clerical work. In this regard, when work duties were reevaluated in one of the Employer's operating units a few years ago to improve efficiency, the less complex administrative tasks were shifted from Designers to Analysts.

Analysts work in cubicles, like Designers and Planners, but do not work in the field. And Analysts, like Planners and Designers, have a separate wage scale created by the Employer's Human Resources Department, and the same benefits enjoyed by its other nonunion employees.

4. Administrative Aides

Administrative Aides perform clerical work, and do not perform design or drafting work. Unlike Planners, Designers, and Analysts, they do not work in cubicles. Rather, they typically work in the lobby of the Employer's facilities where they serve as customer-service representatives and conduct payment transactions. No special training is required. Administrative Aides perform a variety of administrative and clerical tasks including data entry, answering calls, scheduling meetings, routing correspondence, and preparing agendas for meetings. They also file documents, permits, and purchase requests. And they may also be involved in the preparation of work orders, primarily by ensuring that all relevant documents are included in the work-order packet.

Administrative Aides are not required to have any electrical-design expertise. They have a separate wage scale which, like the wage scales of Planners, Designers, and Analysts, is set by the Employer's Human Resources unit. They also have the same benefits enjoyed by all of its nonunion employees.

II. Analysis

A. The Scope of the Unit

It is well-settled that, for a public utility like the Employer, a systemwide unit is presumptively appropriate. Indeed, the Board considers a systemwide unit not just presumptively appropriate in the public utility industry, but the "optimal" unit. Alyeska Pipeline Service Co., 348 NLRB 808, 809 (2006). Decades ago, the Board explained the rationale for this

presumption, which is rebuttable: the “economic reality [is] that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the uninterrupted maintenance of the essential services that this industry alone can adequately provide.” Baltimore Gas & Electric Co., 206 NLRB 199, 201 (1973). More recently, the Board observed that, “if [it] did not require comprehensive units, labor disputes or stoppages at any one facility could have a domino effect across the entire utility system, halting the provision of essential services to the public in places likely far removed from the situs of the dispute.” Verizon Wireless, 341 NLRB 483, 484 (2004).

That being said, the Board’s preference for a systemwide unit does not necessarily mean that all employees of an employer must be included in the same unit. Rather, a systemwide unit refers to a unit that is systemwide in scope. Baltimore Gas & Electric Co., *supra* at 201. Thus, all craft and technical employees in a public utility, for example, or all production and maintenance employees, by themselves, may constitute an appropriate unit. Peco Energy Co., 322 NLRB 1074, 1080-1081 (1997). Neither party seeks a unit that conflicts with this general principle; they just disagree on the unit’s composition.⁷

B. Community of Interest

In determining whether a unit is appropriate under Section 9(b) of the Act, the Board first examines the petitioned-for unit. If that unit is appropriate, then the inquiry ends. As a general

⁷ The parties also disagree on the applicability of the Board’s decision in Specialty Healthcare, 357 NLRB 934 (2011). However, recently in PCC Structural, Inc., 365 NLRB No. 160 (December 15, 2017), the Board overruled Specialty Healthcare. Moreover, reliance on that case is misplaced. Specialty Healthcare involved nonacute-care healthcare facilities, not public utilities. And in that case, the Board held that, in the specific setting of nonacute-care healthcare facilities, traditional community-of-interest unit determination principles should apply. As the Employer points out in its brief, in reviewing the Board’s body of presumptions in representation cases, the Board in Specialty Healthcare specifically noted that it had previously created a presumption that systemwide units are “optimal” in the public utility industry, and that absent compelling circumstances, it is reluctant to fragmentize such units.

rule, an appropriate unit need not be the most appropriate unit; it need be merely an appropriate unit. However, when the petitioned-for unit is not an appropriate unit, the inquiry continues. The Board has the discretion to select an appropriate unit, even one not requested by the parties, and generally selects the smallest appropriate unit. Boeing Co., 337 NLRB 152, 153 (2001).

Many factors are taken into consideration in determining whether a group of employees have a sufficiently “separate and distinct” community of interest to constitute an appropriate unit. Traditionally, the Board considers the following factors when making this determination:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

United Operations, Inc., 338 NLRB 123 (2002).

Although neither party has argued that Planners or Designers are what the Board classifies as technical employees, Board law in this area is instructive. Technical employees are employees who do not qualify as professional employees because they do not possess the requisite advanced education, but whose work is of a technical nature involving the use of independent judgment and requiring substantial specialized training.

Traditionally, the Board has concluded that technical employees, like Planners and estimators, do not share a sufficient community of interest with plant clericals to be included in the same bargaining unit. E.g. Weyerhaeuser Co., 173 NLRB 1170, 1172 (1968). Although the Employer is a public utility, not a manufacturing plant, which was the context of the

Weyerhaeuser case, the functions and skillsets of Planners and Designers, as opposed to those of Administrative Aides and Analysts, appear to be similar to those of technical employees like those in the Weyerhaeuser case. As evidenced by the qualifications required to be Planners and Designers, and like other employees the Board categorizes as technical, the education, training and experience of Planners and Designers is specialized and unique.

1. Skills and Training

Planners and Designers are specialized, technical employees with distinct skillsets. One of the Employer's managers described Planners as "highly valued and "highly thought of."⁸ Although not required, according to the job descriptions, it is desirable for Planners to possess a Bachelor's degree in engineering, business or a related field, as well as five years of experience in several different areas. Similar, just less advanced, qualifications are desirable for Designers, according to the job descriptions. Selection for the Planner job is very competitive because only about 1% of the applicants were hired in the most recent hiring group. Even after Planners are hired, many undergo a year of formal training. Designers also undergo substantial training. By contrast, Administrative Aides, who perform clerical duties, do not undergo any specific training.⁹

Planners and Designers perform unique, highly specialized work at the Employer. By contrast, one of the Employer's witnesses described the work of Analysts and Administrative Aides as fairly generic, and the work of Administrative Aides as primarily clerical. Planners prepare the preliminary drawings or redlines used to create work orders that they prepare with the Designers, and that Analysts and Administrative Aides are not qualified to prepare. More

⁸ Paul Bishop, Principal Manager of Design Support, testified: "We've got Planners...who promote to all parts of the company based on that being such a highly thought of valued skill set within the company itself."

⁹ The record does not indicate whether Analysts undergo any specific training.

than one Employer witness emphasized that Designers support Planners because they implement what is in the drawings the Planners prepare.

Witnesses also explained that Designers and Planners use the same company software to perform their work in varying degrees, depending on the particular section in which they work. Planners and Designers are both involved in identifying the material and equipment, as well as the cost of labor and material, needed for a project. And, unlike Analysts and Administrative Aides, Planners and Designers serve on damage-assessment teams and work on pole testing and loading.

2. Job Function

The primary functions of the Planners are to prepare redlines, which are preliminary drawings from which work orders are created, in conjunction with the Designers, and to oversee the preparation of work orders once the redlines are completed and approved. In this regard, Planners regularly spend close to half of their time in the field. Designers sometimes go in the field to support Planners, and Analysts and Administrative Aides never do. While Planners, Designers, Analysts, and Administrative Aides all contribute to work orders, the technical or substantial work is performed by Planners and Designers; the clerical and administrative work is performed by Analysts and Administrative Aides.

3. Pay, Benefits, and Hours

The Employer's Human Resources department has established separate pay scales for the job categories of Planner, Designer, Analyst, and Administrative Aides companywide, regardless of which section or division in which the individual employee works. While some divisions offer a small amount of supplemental compensation, the basic wage scales are set companywide by the Human Resources department.

A review of the wage scales reveals that Planners as a group command the highest compensation rates, followed by Designers, then Analysts, and finally Administrative Aides. Planners, Designers, Analysts, and Administrative Aides all receive the same benefits that all nonunion employees enjoy at the Employer. And the Human Resources department also sets the fitness for duty, corrective action, performance management, EEO and grievance procedure policies and systems for all of the company.

With regard to work hours, employees in all four categories work during the day, Monday through Friday, but their hours vary slightly, depending on the section of the Employer in which the individual works. Within each section, Planners, Designers, Analysts, and Administrative Aides generally work the same hours and have the same supervisor, but that supervisor may supervise other employees as well.

4. Contact, Interchange, and Transfer

Designers and Planners frequently interact because they work closely together to prepare work orders. While Analysts and Administrative Aides interact with Designers and Planners, their interactions appear to be less frequent and of shorter duration. Analysts and Administrative Aides are sometimes promoted to be Designers, and even Planners. However, it is likely that Designers, more than any other group, will be promoted to be Planners.

Within their specific department, each group serves as what one of the Employer's witnesses described as "the line of support" for the more skilled, and less-skilled, group. Thus, Planners help out Designers when necessary, and Designers help out Planners. Similarly, if a Designer is out, an Analyst may help out with a clerical or administrative task, but not with a technical task.

5. Bargaining History

While there is no bargaining history between the Employer and the Petitioner on behalf of Planners, Designers, Analysts, or Administrative Aides, these parties have a well-established relationship covering other units of the Employer's employees. The record contains evidence that they have a collective-bargaining agreement that is referred to as the "Master Working Agreement" covering several classifications including, inter alia, clerical employees, construction workers, Information Technology employees, and technicians in several organizational units within the Employer. The parties also have separate collective-bargaining agreements covering, inter alia, land surveyors and helicopter pilots within the Aircraft Operations unit. In addition, the parties are in the process of negotiating a collective-bargaining agreement on behalf of employees in a recently certified bargaining unit of employees who distribute the Employer's internal mail.

6. Supervision

Planners, Designers, Analysts, and Administrative Aides are all supervised by the same manager, often the Planning Supervisor. Although some other employees work in hubs and service centers with Planners, including preconstruction inspectors, the record does not clearly establish whether the same manager that supervises Planners, Designers, Analysts, and Administrative Aides also supervises other employees, including preconstruction inspectors. However, the record does establish that Planners, by themselves, are not separately supervised.

III. Findings

Applying the factors the Board uses to determine whether the employees in the petitioned-for unit have a sufficient community of interest that is sufficiently separate and distinct from other employees, I find that the petitioned-for unit is not, by itself, an appropriate

unit. The Planners do not constitute a “well-defined administrative segment,” of the Employer’s operations. Baltimore Gas & Electric Co., *supra* at 201. The Employer does not have, for example, a systemwide planning department. Moreover, because of the overlap in skills and functions of Planners and Designers, the various Planners classifications do not have a sufficiently separate and distinct identity to be the only classifications of employees found in the appropriate unit.

Thus, I find that Planners by themselves do not constitute an appropriate unit but that Planners and Designers together constitute an appropriate unit. Most important to my decision is the fact that the jobs of Planners and Designers are highly technical, requiring distinct skillsets. While the work of Planners is admittedly more technical and more specialized than that of Designers, their skills are similar. The difference between them is a matter of degree. Both Planners and Designers, for example, use the same software for their work. Planners create the redline or preliminary drawing that Designers implement. Planners work closely with Designers to create work orders for the Employer. The work of Planners and Designers is highly integrated. Although Planners spend a considerable amount of their work time in the field, examining sites and meeting with customers, Designers work in the field as well, just not as often.

The Employer argues that the only appropriate unit includes Designers, Analysts, and Administrative Aides, along with the Planners. It maintains that these other classifications, along with the Planners, share supervision, and that they all contribute to work orders.

But technical employees, like Planners and Designers, are generally thought not to share a sufficient community of interest with Analysts and Administrative Aides because the work of these other latter two classifications is primarily clerical and administrative, whereas the work of

Planners and Designers is highly technical. Moreover, when the petitioned-for unit is not appropriate, the Board prefers the smallest appropriate unit. Boeing Co., *supra* at 153.

The community-of-interest analysis is fact-intensive, and in view of the common supervision and functional integration of the work of Planners, Designers, Analysts, and Administrative Aides, in the appropriate case and with different facts, there could be a sufficient community of interest for all of them to be included in the same unit. However, the Act does not require that the unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, it requires only that the unit be an appropriate one. Overnite Transportation Co., 322 NLRB 723 (1996); P.J. Dick Contracting, 290 NLRB 150 (1988).

If the petitioned-for unit is appropriate, the inquiry ends. Wheeling Island Gaming, 355 NLRB 637 (2010); Bartlett Collins Co., 334 NLRB 484 (2001). If the petitioned-for unit is not appropriate, as I have concluded in this case, it is appropriate to consider alternate units that may or may not be units suggested by the parties, keeping in mind that the Board generally prefers the smallest appropriate unit. Boeing Co., *supra* at 153; Bartlett Collins Co., *supra*; Overnite Transportation Co., 331 NLRB 662, 663 (2000). And I may direct an election in an alternate unit where, as here, the Petitioner indicates a willingness to proceed to an election in any unit found appropriate. Acme Markets, Inc., 328 NLRB 1208, 1209 (1999). In this case, the petitioned-for unit, which is limited to Planners, is not appropriate, but the Union is willing to proceed to an election in any unit found appropriate. For the reasons set forth above, I find that the smallest appropriate unit must include Designers in addition to Planners.

IV. Conclusion

Based on the entire record in this matter and in accordance with the discussion above, I find and conclude that:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All employees classified as Planner 1, Planner 1–trainee, Planner 2, Planner 2– trainee, Planner 3, Designer 1, and Designer 2 employees employed by the Employer.

Excluded: All other employees, Analysts, Administrative Aides, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Brotherhood of Electrical Workers, Local 47**.

A. Election Details

The election will be conducted by mail. Mail ballots are appropriate when circumstances make it difficult for eligible employees to vote in a manual election. In such instances, the Regional Director may direct a mail ballot election to enhance the opportunity for eligible employees to vote. San Diego Gas and Elec., 325 NLRB 1143, 1144 (1998). The situations to be considered in selecting which type of election to conducted are as follows:

- (a) where eligible voters are “scattered” because of their job duties over a wide geographic area;
- (b) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and
- (c) where there is a strike, a lockout or picketing in progress.

San Diego Gas and Elec., *supra* at 1145.

Here, employees in the bargaining unit are sufficiently scattered to warrant a mail ballot election. The Employer’s operation encompasses over 50,000 square miles of service territory in California and includes 15 counties. Within this service area voting eligible employees are stationed at many different facilities and locations. Because of the dispersed geographic location of the employees’ worksites, I find a mail-ballot election appropriate in this case.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit **at 4:30 p.m. on Monday, May 7, 2018**, from the National Labor Relations Board, Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles, CA 90017. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, May 14, 2018**, should communicate immediately with the National Labor Relations Board by either calling the Region 21 Office at (213) 894-5254 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 21 Office on **Monday, May 21, 2018, at 1 p.m.** In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **April 15, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, April 26, 2018**.¹⁰ The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

¹⁰ Because this is a mail-ballot election, the undersigned requests that one copy of the list be furnished in the form of mailing labels, if possible, for use by the Regional Office in mailing the voting kit to employees. While the Employer is not required to comply with this request, its cooperation in doing so will assist in promptly sending mail ballots to each employee's correct address and maximize employee participation in the election.

the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays.

However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: April 24, 2018



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017